

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

In re: Case No. 08-35653  
CIRCUIT CITY STORES, INC., et al. Chapter 11  
Debtors. (Jointly Administered)

**RESPONSE OF TAMARACK VILLAGE SHOPPING CENTER LIMITED  
PARTNERSHIP TO LIQUIDATING TRUST'S  
SECOND OMNIBUS OBJECTION TO LANDLORD CLAIMS**

COMES NOW, Tamarack Village Shopping Center Limited Partnership ("Tamarack Village"), creditor in the above entitled and numbered cause, and files this response (the "Response") to Liquidating Trust's Second Omnibus Objection to Landlord Claims [Dkt. No. 10039] (the "Second Omnibus Objection") and states as follows:

**RELIEF REQUESTED**

1. The Liquidating Trust's Second Omnibus Objection seeks to reduce Tamarack Village's claim no. 13208 (the "General Unsecured Claim") for including real estate taxes in the claim. By this Response, Tamarack Village requests that the Liquidating Trust's Second Omnibus Objection to the General Unsecured Claim be overruled in its entirety and the General

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Unsecured Claim be allowed in the amount of \$553,971.03 or such other amount as Tamarack Village shows itself entitled pursuant to any amended claim or otherwise.

## **BACKGROUND**

2. Tamarack Village and Circuit City Stores, Inc. (the “Debtor”) were parties to a lease dated December 4, 1995, as amended by a First Amendment to Lease dated December 29, 1995, as amended by a Second Amendment to Lease dated April 11, 1997 (as amended, the “Lease”) between Tamarack Village, as landlord, and Debtor, as tenant, with respect to the real property located at 8250 Tamarack Village, Woodbury, Minnesota 55125 (the “Leased Premises”).

3. On November 10, 2008, the Debtor and its affiliated entities filed petitions for relief under Chapter 11 of the Bankruptcy Code.

4. In the Second Omnibus Objection, the Trustee asserts that the General Unsecured Claim should be reduced by the amount of \$123,800 (from \$553,971.03 to \$430,170.94), because, the amount of the claim included real property taxes (the “Taxes”) that should not have been included.

## **Response**

5. The Debtor’s payment of Taxes was required by Section 9 of the Lease. A true and correct copy of the Lease is attached hereto as Exhibit A. To the extent that the Second Omnibus Objection seeks to reduce the amount of the General Unsecured Claim to exclude unpaid Taxes, the Trust’s objection must be overruled as rent obligations payable under the Lease are the basis for a claim of damages under 11 USC § 502(b)(6).

6. Through Exhibit A, Tamarack Village demonstrates that the Taxes were additional rent under the Lease, and included as part of the normal rent calculation.

Wherefore, Tamarack Village requests that the Court overrule the Second Omnibus Objection as it pertains to Tamarack Village and allow Tamarack Village's General Unsecured Claim (Number 13208) in the amount of \$553,971.03.

Dated: June 2, 2011

**CHRISTIAN & BARTON, LLP**

/s/ Michael D. Mueller

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**CERTIFICATE OF SERVICE**

I, Michael D. Mueller, hereby certify that on the 2<sup>nd</sup> day of June, 2011, a true and correct copy of the foregoing Response has been served electronically using the ECF system on all registered users of the CM/ECF system who have filed notices of appearance in this matter.

/s/ Michael D. Mueller

Michael D. Mueller